

REMARKS

Applicant has carefully studied the outstanding Official Action mailed on February 11, 2009. This response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

Claims 1, 5-10 and 12-19 stand rejected under 35 USC §103(a) as being unpatentable over Shain et al (US 6027459), Douglas et al. (US 5951492), Moerman et al (US 6706159) or Stiene et al. (US 2004/0096959) in view of Eason et al (5186897) alone or further in view of Tenerz et al (US 4941473).

Claim 20 stands rejected under 35 USC §103(a) as being unpatentable over Shain et al (US 6027459), Douglas et al. (US 5951492), Moerman et al (US 6706159) or Stiene et al. (US 2004/0096959) in view of Eason et al (5186897) alone or further in view of Tenerz et al (US 4941473), as applied above, and further in view of Stanton et al (US 2004/0219523).

Examiner has made this a final action, citing MPEP 706.07(b).

Applicant respectfully traverses the status of "final". Quoting from MPEP 706.07(b): "The claims of a new application may be finally rejected in the first Office action in those situations where (A) the new application is a continuing application of, or a substitute for, an earlier application, and (B) all claims of the new application (1) are drawn to the same invention claimed in the earlier application, and (2) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application."

Claim 20 was not drawn to the same invention claimed in the earlier application and the art of record could not have been used against it – Stanton et al is newly cited art. Thus, the rejection is respectfully considered to be non-final.

Applicant respectfully traverses these rejections as has been previously explained. The optical waveguide in Eason et al. is used in a different manner than the instant invention. As stated in the previous response, Eason et al. does not teach using an optical waveguide to optically connect the optical sensor to the processor. Instead, Eason et al. teaches using the optical waveguide as the place where the reaction takes place and uses an external fluorescence measuring device to measure the fluorescence created in the optical waveguide. The fluorescence measuring device is not connected to the optical waveguide. In contrast, in the present invention, the optical waveguides optically connect the optical sensor to the processor. This is entirely different from Eason et al.

Examiner seems to agree with this point as well as the arguments about disposable but says they are related to a method of use.

Claim 21 has been added to recite a method of use and recites precisely the previously claimed apparatus, so it is clear that the newly submitted claim is directed to the previously claimed invention.

With regard to claim 20, Examiner states:

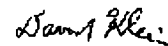
Stanton et al. teach in paragraph [0255] a "surface Plasmon resonance sensor" (referenced hereafter as "SPR") in combination with a waveguide to gain the advantages of real time analysis of biological sample. Paragraph [0767] teach the SPR provides very sensitive analysis of binding/unbinding of analytes.

This is respectfully traversed. There is no such statement about a waveguide in Stanton et al and it is unknown what the Examiner is quoting. Indeed paragraph [0255] says nothing at all about SPR. Paragraph [0767] and following paragraphs are silent about using SPR with a waveguide.

Accordingly, claims 1, 5-10 and 12-21 are respectfully deemed allowable. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Please note: Recognizing that Internet communications are not secure, the undersigned hereby authorizes the USPTO to communicate with the undersigned concerning any subject matter of this application by electronic mail. The undersigned understand that a copy of these communications will be made of record in the application file.

Respectfully submitted,
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